

## Message Text

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TO AMEMBASSY TOKYO

UNCLAS STATE 292838

E.O. 11652: N/A

TAGS:AINF

SUBJECT: PRIVACY ACT ACCOUNTING FOR DISCLOSURES

REF: TOKYO 16992

1. DEPARTMENT RECENTLY MET WITH OMB OFFICIALS CHARGED WITH DAY-TO-DAY IMPLEMENTATION OF THE PRIVACY ACT REGARDING DISCLOSURE OF INFORMATION FROM DEPARTMENT FILES TO REPRESENTATIVES OF OTHER U.S. AGENCIES, PARTICULARLY LAW ENFORCEMENT AGENCIES ATTACHED TO OVERSEAS POSTS. ALTHOUGH OMB HAS NOT PROVIDED ANY FURTHER GUIDANCE ON THIS MATTER BEYOND WHAT IS IN THEIR GUIDELINES ISSUED ON JULY 9, 1975, (A-4872, JULY 17, 1975), WE WERE INFORMALLY ADVISED THAT A DIPLOMATIC OR CONSULAR MISSION IS NOT RPT NOT ANALAGOUS TO A 'PERMANENT STRIKE FORCE" AS DESCRIBED IN OMB GUIDELINES. EMPLOYEES OF OTHER FEDERAL AGENCIES ASSIGNED TO A U.S. MISSION CANNOT RPT NOT BE ACCORDED INTRA-AGENCY RIGHTS UNDER THE ROOF OF THE DEPARTMENT OF STATE.

2. THE DEPARTMENT HAS PROPOSED THAT OMB CONVENE A MEETING OF AGENCIES HAVING REPRESENTATIVES OVERSEAS TO DISCUSS INTER-AGENCY DISCLOSURES OF INFORMATION. HOWEVER,  
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UNTIL SUCH TIME AS OMB ISSUES FORMAL GUIDANCE, POST

SHOULD CONTINUE TO SOLICIT COOPERATION FROM ALL AGENCIES TO ACCOUNT FOR ALL DISCLOSURES.

POST SHOULD THEREFORE ACCOUNT FOR EACH DISCLOSURE OF PERSONAL INFORMATION FROM A NAME-RETRIEVABLE SYSTEM OF RECORDS EXCEPT WHEN THE DISCLOSURE IS TO: (1) THOSE OFFICES AND EMPLOYEES OF THE AGENCY WHICH MAINTAINS THE RECORD WHO HAVE A NEED FOR THE RECORD IN THE PERFORMANCE OF THEIR DUTIES; (2) THE PUBLIC UNDER THE FREEDOM OF INFORMATION ACT. THE ACCOUNTING SHOULD INCLUDE THE DATE, NATURE, AND PURPOSE OF EACH DISCLOSURE AND THE NAME AND ADDRESS OF THE PERSON OR AGENCY TO WHOM THE INFORMATION IS DISCLOSED. THE ACCOUNTING IS MAINTAINED FOR 5 YEARS OR THE LIFE OF THE RECORD WHICHEVER IS LONGER.

3. WITH REGARD TO QUESTION OF FURNISHING INFORMATION TO LOCAL POLICE AND OTHER LAW ENFORCEMENT AGENCIES, PRIVACY ACT DOES NOT PROHIBIT DEPARTMENT FROM CARRYING OUT DUTIES AND RESPONSIBILITIES AS REQUIRED BY LAW OR AN EXECUTIVE ORDER. IT SHOULD BE NOTED, HOWEVER, THAT ONE OF THE PRIMARY OBJECTIVES OF THE ACT IS TO RESTRICT THE USE OF INFORMATION TO THE PURPOSES FOR WHICH IT WAS COLLECTED. IT IS INTENDED TO DISCOURAGE THE UNNECESSARY EXCHANGE OF INFORMATION TO OTHER PERSONS AND AGENCIES AND SERVE AS A CAUTION TO AGENCIES TO THINK OUT IN ADVANCE WHAT USES IT WILL MAKE OF INFORMATION AND SO NOTIFY THE PUBLIC THROUGH THE PUBLICATION OF "ROUTINE USE" STATEMENTS IN THE FEDERAL REGISTER. POST'S ATTENTION IS DIRECTED TO DEPARTMENT'S A-395 OF JANUARY 23, 1976 WHICH TRANSMITTED DEPARTMENT'S NAME-RETRIEVABLE SYSTEM DESCRIPTIONS AND ROUTINE USE STATEMENTS. THERE ARE ELEVEN EXCEPTIONS TO THE WRITTEN CONSENT REQUIREMENT OF THE PRIVACY ACT. TWO CATEGORIES APPEAR TO APPLY TO YOUR EXAMPLES: (B)(3) THE ROUTINE USE PROVISION; AND (B)(7) CIVIL CRIMINAL LAW ENFORCEMENT.

4. IN THE CASE OF U.S. LAW ENFORCEMENT AGENCIES THE MOST DESIRABLE WAY TO HANDLE REQUESTS FOR PERSONAL INFORMATION IS UNDER (B)(7). THAT IS, HAVE THE AGENCY PROVIDE A WRITTEN REQUEST SPECIFYING THE PARTICULAR RECORD REQUESTED AND LAW ENFORCEMENT PURPOSE FOR WHICH THE RECORD IS REQUIRED.

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5. IN THE ALTERNATIVE, RELEASE MAY POSSIBLY BE PERMITTED UNDER THE (B)(3) ROUTINE USE PROVISION.

6. FOR EXAMPLE, UNDER SYSTEM DESCRIPTION NO. 5 A CONSULAR FILE MAY BE RELEASED UNDER THE "ROUTINE USE" EXCEPTION TO OTHER GOVERNMENT AGENCIES WHO HAVE STATUTORY OR OTHER LAWFUL AUTHORITY TO MAINTAIN SUCH INFORMATION. THE IMMIGRATION AND NATURALIZATION SERVICE IS LISTED AS A PRINCIPAL USER OF INFORMATION FROM THIS SYSTEM OF

RECORDS. FURTHER, UNDER THE "PREFATORY STATEMENT OF ROUTINE USES" THE POST MAY RELEASE PERSONAL INFORMATION "WHEN A SYSTEM OF RECORDS...INDICATES A VIOLATION OR POTENTIAL VIOLATION OF LAW...THE RELEVANT RECORDS MAY BE UNCLASSIFIED REFERRED, AS A ROUTINE USE, TO THE APPROPRIATE AGENCY... CHARGED WITH THE RESPONSIBILITY OF INVESTIGATING OR PROSECUTING SUCH VIOLATIONS...'

IN THE CASE OF FOREIGN GOVERNMENTS, OUR "ROUTINE USE" STATEMENT FOR CONSULAR RECORDS (NO. 5) AND THE "PREFATORY STATEMENT" PERMITS THE RELEASE OF INFORMATION TO FOREIGN GOVERNMENTS ON CITIZENSHIP MATTERS.

7. IT IS BEST TO KEEP IN MIND THAT DISCLOSURE OF INFORMATION UNDER THIS (AND ALL ROUTINE USE PROVISIONS) IS PERMISSIVE AND NOT MANDATORY. POST HAS DISCRETION AS TO ACTUAL DISCLOSURE AND MUST DECIDE ON A CASE-BY-CASE BASIS. IF POST REQUIRES ADDITIONAL CLARIFICATION ON "ROUTINE USE" STATEMENTS, DEPARTMENT WILL NEED TO KNOW TYPE OF FILE, I.E., CONSULAR, PERSONNEL, ETC. AND NATURE OF DOCUMENTS IN FILE.

8. DEPARTMENT WILL TRANSMIT TO POST ADDITIONAL GUIDANCE ON ACCOUNTING FOR DISCLOSURES WHEN SUCH INFORMATION IS AVAILABLE. ROBINSON

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